

# TERMS OF USE – WÄRTSILÄ ONLINE & DIGITAL SOLUTIONS (2021)

## 1. INTRODUCTION

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SERVICE. BY USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, YOU MUST NOT USE THE SERVICE FOR ANY PURPOSE WHATSOEVER.**

1.1 These Terms of Use ("Terms"), as modified or amended from time to time, shall apply to the access and use of the applicable digital solutions, products and services of Wärtsilä (including but not limited to apps, websites, cloud-based services and APIs), whether accessed online or offline via electronic means (hereinafter "Service").

1.2 In these Terms, "Wärtsilä" means the legal entity in the Wärtsilä group of companies that provides the Service. "User" and "You" means the person using the Service, and if the User is using the Service on behalf of a legal person, business or other organisation ("Organisation") the term User includes also includes such Organisation.

1.3 By using the Service on behalf of any Organisation, User represents and warrants that User has all necessary capacity and authority to enter into these on behalf of such Organisation as a legally binding contract between such Organisation and Wärtsilä in all applicable jurisdictions and that the Organisation enters into such contract.

1.4 All information accessible through the Service, including, without limitation, spare parts information, data structures, technical and other specifications, pricing, advice, service or work order information, performed services or work information and other data and information shall hereinafter be referred to as "Data".

1.5 By accessing the Service, User accepts these Terms and enters in to a user agreement with Wärtsilä ("User Agreement") and also confirms that it has read the applicable Wärtsilä Privacy Notice. These Terms are effective from the day User initially accesses the Service until the User Agreement is terminated or You cease to use the Service. Wärtsilä reserves the right to change these Terms at any time to its sole discretion.

1.6 These Terms may be subject to a separate services agreement, sales agreement or other similar agreement between User and/or the Organisation and Wärtsilä ("Service Agreement"), however in the case of conflicting terms, the terms of the Service Agreement prevail.

## 2. USER CONDUCT

2.1 User shall comply with all laws and regulations applicable as well as with these Terms and any third-party or open-source software licenses and terms of use that may be applicable while using the Service. The User warrants that it shall not use the Service or Data to do any of the following: (i) restrict or inhibit any other user from using the Service or Data; (ii) post or transmit any unlawful, illegal or obscene information of any kind, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any national or international law; (iii) knowingly post or transmit any information or software which contains a virus, worm, cancelbot or other harmful component; (iv) upload, post, publish, transmit, reproduce, distribute or participate in the transfer or sale, or in any way exploit any information, software or other material obtained through the Service or Data which is protected by copyright or other proprietary right or derivative works with respect thereto, without obtaining permission of the copyright owner or right holder. In addition, the User may not effect or participate in any activity to (a) post to any usenet or other news group, forum, email listing or similar group or list, articles which are off topic according to the charter or other public statements of the group or list; (b) send unsolicited mass mailings; or (c) falsify or "spoo" user information provided to Wärtsilä or to other users in connection with the use of the Service or Data. All Users are required to behave professionally and respectfully. Should the User breach the conduct set forth in these Terms, Wärtsilä shall be entitled to deny access to the Service and suspend or terminate the User Agreement immediately without notice.

2.2 The User's use and access rights to the Service shall be subject to compliance with the Service Agreement, including but not limited to due payment of the fees contained in the Service Agreement, if applicable.

## 3. REGISTRATION AND SECURITY

3.1 If required by Wärtsilä, User shall register and will receive a user ID and a password for the use of User's account, the Data or access to the Service's secure areas (the "Access Codes"). All Access Codes are User specific and the User is responsible for maintaining the confidentiality and monitoring the use of the Access Codes. User is responsible for maintaining and updating the contact information of User. User agrees not to share the Access Codes with anyone or allow anyone to use User's account and takes full responsibility for all activity that occurs through the use of User's account, including, without limitation, ordering, unauthorized access by User's employees or third parties, except for access by third parties resulting from Wärtsilä's sole negligence. User or the delegated administrator shall notify Wärtsilä immediately if User becomes aware of any unauthorized person accessing User's account or if employment of an authorized user ends. Further, User must immediately notify Wärtsilä if User becomes aware of any cyber security concerns or incidents in the Service. Discoveries shall be reported to Wärtsilä security through <http://www.wartsila.com/contract/report-vulnerability>. User has the ability to modify its password at any time. Wärtsilä recom-

mends User to modify its password regularly. User must notify Wärtsilä immediately if it wishes to terminate its master user ID and password or have these Access Codes reissued.

3.2 Wärtsilä is not liable for cyber incidents or breaches, any unauthorized access, interference, intrusion, leakage and/or theft of data or information within User's systems.

## 4. SUBMISSIONS AND DOCUMENTS BY USERS

4.1 User agrees to accept sole responsibility for all its submissions through the Service, including, without limitation, information, statements and material (the "Submissions"). User agrees to only submit Submissions that are accurate to the fullest of User's knowledge.

4.2 User agrees that the Submissions will not infringe intellectual property rights or trade secrets.

4.3 If a Submission or a part thereof is subject to a patent that is pending or has been issued, User shall disclose the fact to Wärtsilä. Wärtsilä acknowledges that to the extent User holds a patent, no licence under any patent is granted herein to Wärtsilä.

4.4 User may upload documents to the Service where technically possible. Wärtsilä assumes no responsibility or liability, whether direct, indirect special, incidental or consequential, for the documents uploaded by User nor the correctness, errors or omissions for information contained therein. Wärtsilä will not verify any documents uploaded by User. Any actions by User as a result of the information or data contained in such documents will be at User's own risk and cost. Wärtsilä shall have the right to view such documents uploaded by User. User hereby irrevocably releases and discharges Wärtsilä from any and all actions, claims, liabilities and demands User may have against Wärtsilä in connection to the Service or any of the Submissions or documents thereof.

## 5. INDEMNITY

User agrees to defend, indemnify and hold Wärtsilä and its affiliates, and its and their directors, employees and agents harmless from any and all liabilities, costs and expenses, including reasonable attorneys' fees related to or arising from (a) the use of the Service and other electronic means or the placement or transmission of any Submissions through the Service by User; (b) claims of infringement of intellectual property rights arising from the use of the Service by User, and (c) claims, damages or penalties related to personal data or cyber security breaches resulting from the use of the Service by User.

## 6. DISCLAIMER OF WARRANTY

Wärtsilä is providing access to the Service "AS IS" and "AS AVAILABLE" for User's use. User assumes total responsibility and risk for the User's use of the Service and the Data. WÄRTSILÄ HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO ANY MERCHANDISE, INFORMATION OR SERVICE PROVIDED THROUGH THE SERVICE, VIA INTERNET AND/OR IN ANY ELECTRONIC PRODUCT. Wärtsilä shall not be liable to User or any third party for any damages arising from or as a result of any delay, omission or error in electronic transmission via the Service or other electronic means, even if advised of the possibility of such damages.

WÄRTSILÄ MAKES NO WARRANTY AND DISCLAIMS ALL WARRANTIES AND LIABILITY REGARDING DATA ERRORS AND OMISSIONS AND/OR USE OR INTERPRETATION OF ANY INFORMATION CONTAINED THROUGH THE SERVICE OR DATA, AND IT IS SOLELY THE USER'S RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ALL OPINIONS, ADVICE, WRITTEN MATERIAL, SERVICES OR OTHER INFORMATION CONTAINED IN OR RETRIEVED THROUGH THE SERVICE AND/OR DATA. Wärtsilä shall not be liable for any third party site that may be linked from Wärtsilä's website.

## 7. LIMITATION OF LIABILITY

7.1 IN NO EVENT SHALL WÄRTSILÄ BE LIABLE IN ANY MANNER WHATSOEVER FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, SECONDARY, SPECIAL OR PUNITIVE DAMAGES, LOSSES OR EXPENSES OR LOSS OF PROFITS OR REVENUE ARISING OUT OF OR IN RELATION TO THE USER ACCESSING THE SERVICE, DATA OR ANY WEBSITE LINKED THERETO, OR THE UNAVAILABILITY OF ITEMS ORDERED THROUGH THE SERVICE, OR THE INABILITY TO USE THE CONTENTS OF THE SERVICE, OR THE USE OR ATTEMPTED USE OF INFORMATION CONTAINED THEREIN OR IN RELATION TO ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, LOSS OR CORRUPTION OF DATA, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS OR LINE OR SYSTEM FAILURE, EVEN IF WÄRTSILÄ OR ITS REPRESENTATIVES ARE ADVISED OF SUCH DAMAGES, LOSSES OR EXPENSES.

7.2 User agrees to release and hold Wärtsilä harmless from any and all claims, demands, damage and liability in case of the User having a dispute with another user relating to, arising from or in any way connected to the use of the Service. Wärtsilä reserves the right to correct errors, typographical or otherwise, even after an order has been confirmed through the Service. Wärtsilä reserves the right to terminate a confirmed order in cases where such errors have been made.

## 8. CONFIDENTIALITY, INTELLECTUAL PROPERTY, DATA AND ADVISORY

8.1 The entire content of the Service is subject to copyright. All data and other information available in the Data are proprietary, confidential and sole property of Wärtsilä or third parties licensing such information to Wärtsilä. User has the right to use the Service and Data, and the content thereof, for internal business use only, provided that User does not modify the content. User agrees not to copy, reproduce, distribute, publish or disclose to a third party any content of the Service, without Wärtsilä's prior written permission. User agrees that it shall disclose content of the Service only to those of its employees, contractors or other agents who need to know such content and who have agreed to be bound by terms and conditions substantially similar to, and no less restrictive with respect to limitations on use and disclosure than, those of these Terms. Intellectual property rights associated with the content on the Service or any document or data provided by Wärtsilä in connection therewith shall remain Wärtsilä's property. All documents and information provided by Wärtsilä through the Service are intended solely for the purpose for which they were provided and are not intended or represented to be suitable for reuse by User or others for any other purpose or project. User agrees not to use content of the Service for purposes other than those for which they were provided. Any reuse without prior written authorisation and, as the case may be, verification or adaptation by Wärtsilä for the specific purpose intended will be at User's sole risk and without liability or legal exposure to Wärtsilä. User shall defend, indemnify and hold harmless Wärtsilä against all claims, costs, losses, liabilities, damages, injuries, and expenses, including attorneys' fees, arising out of or resulting from unauthorised use or reuse of Wärtsilä's intellectual property rights. Any verification or adaptation of documents will entitle Wärtsilä to additional compensation. Individual documents contained in the Service may be subject to additional terms and conditions indicated in those documents

8.2 Wärtsilä may collect and use technical data, gathered in connection with the Service, in order to provide, monitor, develop and support its products, services and solutions, and to provide new services or technologies to customers. Data may be transferred within Wärtsilä group and to third parties who act for or on their behalf for processing the data. Wärtsilä shall own any enrichment, report or derivative work developed or derived from such data. The rights granted hereunder shall survive any termination or expiration of these Terms or the Service Agreement.

8.3 Each Party shall comply with and assist the other in complying with all applicable requirements of all data protection legislation that applies to the Contract. Wärtsilä's personal data processing activities are set out in its Privacy Notices which are available at: <https://www.wartsila.com/legal-privacy/privacy> and incorporated herein by reference. Parties agree that in relation to any personal data shared between them, unless otherwise provided in the General Data Protection Regulation (EU 2016/679) ("GDPR"), or agreed between the Parties, both are acting as data controllers as described in GDPR.

8.4 Any technical advice and technical recommendations related to the operation of User's vessels or other premises are provided by Wärtsilä only as an aid to User's decision making. The safe voyage planning, navigation, manoeuvring, operation and monitoring of and instructions and advice given to any User vessels or other premises are dependent on human skill and judgement and are the responsibility of the relevant appropriately qualified personnel responsible for such tasks in accordance with all applicable laws, regulations and best practices. Accordingly, Wärtsilä will not be liable for any accident, damage or delay caused by or to any vessel or other premises owned or operated by User or any other person whether or not the accident or damage is related to the use, reliance upon, operation or failure of the products or solutions.

## 9. BREACHES AND REMEDIES

In addition to any remedies under the applicable law, User recognizes that any breach or violation of any provision of the User Agreement by it may cause irreparable harm to Wärtsilä which monetary damages may not necessarily remedy and which damages will be difficult to ascertain. Therefore, upon any actual or impending violation of any provision of the User Agreement by User, Wärtsilä may obtain, in addition to, and without limiting, any other remedy or right it may have, from any court of competent jurisdiction a preliminary, temporary or permanent injunction, restraining or enjoining that violation by User or any entity or person acting in concert with that User. User's sole and exclusive remedy for any breach by Wärtsilä of these Conditions shall be limited to termination of this User Agreement.

## 10. ASSIGNMENT

User shall not be entitled to transfer or assign this User Agreement or the Access Codes, without a prior written consent from Wärtsilä.

## 11. TERMINATION AND MODIFICATION

11.1 Wärtsilä may elect to update, modify, change or terminate all or any part of the functionality available through the Data or Service, including modification or termination of the ability to place orders or make inquiries at any time in the future. Wärtsilä may modify these Terms from time to time. Any amendments or modifications may be provided to User through on-line notice. User agrees that access to the Data or Service after User has, or should have received, notice of modifications or amendments to these Terms will constitute acceptance of all such modifications or amendments.

11.2 Wärtsilä reserves the right, at its sole discretion, to terminate, suspend or limit

the User's access to the Service and terminate the User Agreement. The User Agreement terminates also when the applicable Service Agreement is terminated or expired, or otherwise when User ceases or is no longer permitted to use the Service. The provisions under these Terms will survive such termination.

11.3 User may discontinue their access to the Service and terminate the User Agreement by notifying Wärtsilä thereof. The provisions under these Terms will survive such termination.

11.4 Upon termination of the User Agreement or the applicable Service Agreement, User agrees to immediately cease accessing the Data and to return any related material provided

## 12. GOVERNING LAW AND ARBITRATION

12.1 The User Agreement shall be governed by and interpreted in accordance with the laws of Finland, excluding the conflict of law rules applicable in such jurisdiction. Any controversy, claim or dispute between the parties hereto arising out of or related to the User Agreement shall be submitted to the International Court of Arbitration of the International Chamber of Commerce for final and binding arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by one (1) or more arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and shall take place in Helsinki, Finland.

12.2 Nothing contained in this clause shall preclude Wärtsilä from bringing legal action or proceeding against the User for purposes of enforcement, injunctive relief or interim or remedial measures in the courts of any jurisdiction where the User or any of its property or assets may be found or located, and the User hereby irrevocably submits to the jurisdiction of any such court.

## 13. ENTIRE AGREEMENT

13.1 Subject to 1.6, these Terms contain the entire agreement and understanding between the parties hereto with respect to the subject matter here of the terms of use of the Service and supersede all prior agreements and understandings relating to such subject matter. The sale of any other products or services by Wärtsilä shall be in accordance with the applicable Wärtsilä General Terms and Conditions or other applicable agreement. If a provision of these Terms is at variance with necessary requirements of applicable law, then these Terms shall be deemed to be amended to the minimum extent necessary to comply with such applicable law. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein by express written agreement of the parties hereto.